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09/471,153	12/23/1999	JEFFREY LEE JONES	8200.163	7070

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 10

Application Number: 09/471,153
Filing Date: December 23, 1999
Appellant(s): JONES ET AL.

Matthew W. Stavish
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/10/01.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1, 4-6 and 8 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4,452,347	Dozier	6/84
5,887,687	Williams	3/99

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 4-6 and 8 are rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 5.

1. Claims 1, 4-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dozier in view of Williams.

Dozier shows a brake assembly as in the present invention comprising: a brake spider 12 non-removably secured to an axle beam 18 in figure 1, column 2, lines 58, wherein spider 12 includes a pivoting end 42 and an actuating end 38 which includes opening 40 for receiving actuating shaft 34, a pair of brake shoes 28, an S-cam 32, and cam followers 36. The operation of the brake assembly is disclosed in column 3, lines 8-22. Dozier does not illustrate the actuator cylinder, an actuating shaft and lever to actuate the cam shaft 34. Dozier discloses in column 3, line 14 that his brake assembly can be actuated by means well known in the art. Williams shows a well-known means of actuating a brake assembly, a pneumatic actuator 36 with an actuating rod 38, an actuating shaft 30 and lever 62. Williams further shows a mounting sleeve 32 having a first end and a second end, said first end is secured to said actuator via bracket 34 and said second end is secured to the actuating end of back plate 12 via bracket 26. It would have been obvious to one of ordinary skill in the art to have provided Dozier's brake assembly with a known actuating assembly as taught by Williams in order to perform the intended function of the actuator. It is noted that pneumatic brake actuators are well known in the art to actuate brake shoes as evidence by Williams. It is further

noted that Dozier's brake assembly, as modified by Williams' means of actuating, would have the second end of said mounting sleeve secured to the actuating end of Dozier's spider.

1a. Re: claims 4-6, Williams shows mounting brackets 34, 26 attached to the ends of mounting sleeve 32. Williams further shows bracket 34 to be fastened to pneumatic actuator 36 and bracket 26 to be fastened to the actuating end of backplate 12. Dozier's brake assembly, as modified by Williams, would have a second bracket such as bracket 26 of Williams to be fastened to the actuating end of Dozier's spider 12 in order for the brake assembly to be actuated by the pneumatic actuating cylinder.

1b. Re: claim 8, the above rejection for claims 1 and 4-6 meets all the limitations in claim 8 except for said spider being welded to said axle and said actuator support plate being axially offset from said pivoting end support plate. Dozier discloses in column 2, line 58 that the spider 12 is welded to axle 18. Figure 1 of Dozier shows that actuator support plate 38 is axially offset from the pivoting end support plate 42.

(11) Response to Argument

Appellant argues that Dozier fails to disclose the pneumatic brake actuator directly mounted to the brake spider, in page 7, lines 9 and 10. Appellant further asserts that Williams' actuator is mounted to the back plate and not to a spider, in page 8, lines 2-4. Appellant concludes that the combination of Dozier in view of Williams is a result from hindsight reconstruction, in page 9, line1.

The Examiner would like to answer Appellant's argument in two tiers. First, it is believed that Appellant is arguing the refererices individually instead of as a

combination. Second, it is further believed that the combination of Dozier in view of Williams is proper and is not a result from hindsight reconstruction of Appellant's disclosure.

First, it is correct that Dozier fails to disclose the pneumatic brake actuator directly mounted to the brake spider and Williams' actuator is mounted to the back plate and not to a spider. Has Dozier disclosed the pneumatic brake actuator directly mounted to the brake spider 12, there would be no need for a teaching of an actuator such as Williams'. Has Williams teached that the pneumatic actuator is mounted to a spider, there would be no need for a disclosure of a brake assembly which has a spider such as Dozier's. Hence, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the two references for a complete brake assembly and actuation system to work properly together.

Secondly, although, Dozier lacks a pneumatic brake actuator; and Williams is relied upon for a teaching of the use of a pneumatic actuator to actuate a brake assembly, this is not a result from hindsight reconstruction of Appellant's disclosure. Dozier clearly states the need for a teaching of a well known means of actuation to rotate shaft 34, in column 3, lines 13-15, which is being quoted here for Appellant's convenience: "The cam shaft 34 can be rotated by means (not shown) which are well known in the brake art ...". This clearly stated need would prompt an ordinary person of skill in the brake art to search for a teaching of a well known means of actuation, such as Williams' actuator, to actuate Dozier's brake assembly. Since this need is clearly stated in Dozier's disclosure, a combination of Dozier in view of Williams is clearly not a

result of a hindsight reconstruction of Appellant's disclosure, but is a result of a proper combination of a well known knowledge in the brake art in order to satisfy a clearly stated need.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

CHRISTOPHER P. SCHWARTZ
PRIMARY EXAMINER

January 9, 2002

Conferees
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